

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

DOROTHY PUGH

Claimant

VS.

AMERICAN INSULATED WIRE

Respondent

AND

RELIANCE NATIONAL INDEMNITY CO.

Insurance Carrier

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Docket No. 241,426

ORDER

Claimant appealed the June 14, 1999 preliminary hearing Order entered by Administrative Law Judge Nelsonna Potts Barnes.

ISSUES

This is a claim for a series of repetitive mini-traumas and cumulative injury to both wrists and both arms from approximately October 18, 1997 through claimant's last day of work for the respondent on March 15, 1998. After finding that claimant did not prove timely written claim, Judge Barnes denied claimant's request for benefits.

Claimant contends the Judge erred. Because the respondent did not file an accident report with the Director, claimant argues that she had one year from her last day of work to make written claim for benefits.

Conversely, in their brief to the Appeals Board, the respondent and its insurance carrier contend claimant should be denied benefits because she failed to give timely notice of the accidental injury and failed to make timely written claim. They argue that the respondent was not required to file an accident report because the company had no knowledge of an accidental injury. Therefore, the respondent argues that claimant was required to make written claim within 200 days.

The only issues before the Appeals Board on this appeal are whether claimant provided respondent with both timely notice of the accidental injury and timely written claim.

FINDINGS OF FACT

After reviewing the record compiled to date, the Appeals Board finds:

1. In approximately November 1996, Ms. Pugh started with American Insulated Wire (American) where she made wire, working 12-hour days.
2. In approximately October 1997, Ms. Pugh began experiencing symptoms in her arms and wrists. On October 10, 1997, Ms. Pugh consulted Dr. Christensen who prescribed medications and wrist braces. From October 1997 through the date of her termination on March 15, 1998, Ms. Pugh wore the wrist braces while at work. When she first began wearing the braces, Ms. Pugh spoke with her supervisor, Tony Chavez, about the braces, her medications, and the symptoms in her hands and wrists.
3. On February 2, 1998, Ms. Pugh returned to Dr. Christensen. At that time, the doctor told Ms. Pugh that she probably had carpal tunnel syndrome and that he was considering referring her to another doctor for further tests. Dr. Christensen's February 2, 1998 office notes read, in part:

Dorothy presents today for evaluation of her wrists and hands. They continue to cause her pain. They were much better. She said that after her treatment with the NSAID's last time, she had shown marked improvement. However, recently she has had progression and worsening of her symptoms to where with the long hours she is working she needs to shut the machine down occasionally because of the severity of the pain. She has generalized paresthesias to her hand coming from her wrist and percussion over the carpal ligament causes her to have some paresthesias as well.

The mechanism whereby she works is that she wraps the wire around her wrist and has to pull. There is a lot of finger movement and a lot of dexterity required.

. . .

A- 1. Probably bilateral carpal tunnel syndrome.

P- 1. The patient will be placed in bilateral carpal splints. She is to wear these only while at work, at home she can go without. If she continues to have problems we will add an NSAID and if that is still not beneficial, we will plan on EMGs for diagnostic purposes at a later date.

Ms. Pugh advised her supervisor of the doctor's diagnosis and the possible referral. In addition, Ms. Pugh kept the company's front office informed of her doctor's visits and medications that she was taking.

4. On March 5, 1998, Ms. Pugh returned to Dr. Christensen. At that visit the doctor decided to refer Ms. Pugh to Dr. Jain for EMGs of both hands. Ms. Pugh spoke with her supervisor about the referral as she would be required to miss work to attend the appointment.

5. American terminated Ms. Pugh before she saw Dr. Jain.

6. American did not file an accident report with the Workers Compensation Director. The parties stipulated that American received written claim for workers compensation benefits on January 27, 1999.

CONCLUSIONS OF LAW

1. The finding that Ms. Pugh failed to make timely written claim should be reversed.

2. Ms. Pugh's job at American Insulated Wire required the repetitive, strenuous use of her hands and wrists. It is more probably true than not that Ms. Pugh developed bilateral carpal tunnel syndrome as the direct result of repetitive mini-traumas to her wrists and arms that she sustained at work each and every day through her last day of work on March 15, 1998.

3. American had notice of Ms. Pugh's injuries to her hands and wrists. Ms. Pugh's supervisor knew that she was experiencing symptoms in her hands and wrists, knew that she was seeing a doctor for those symptoms, and knew that she was wearing wrist braces at work and taking prescription medications for her wrists. Ms. Pugh's supervisor also knew the requirements of her job and that the job required the repetitive, forceful use of her hands and wrists. And Ms. Pugh spoke with her supervisor about her hands being affected by her work. The Appeals Board concludes these facts establish that before Ms. Pugh was terminated American had notice and knowledge of Ms. Pugh's injuries and that those injuries were related to her work. Therefore, the Board concludes that there was timely notice of the accidental injuries.¹

4. Based upon the above conclusion, the argument that American was not required to file an accident report with the Director because of lack of notice of the injury is without merit. When an employer fails to file an accident report, the time for serving written claim is extended to one year from the date of accident, the suspension of disability compensation, or the date of last authorized medical treatment, whichever is later.²

¹ See K.S.A. 44-520.

² See K.S.A. 44-557.

5. Because the company failed to file an accident report with the Director, the time for serving written claim was extended from 200 days to one year. Therefore, the written claim served upon American on January 27, 1999, was timely as it was within one year of Ms. Pugh's last day of work and last day that she sustained repetitive mini-traumas.

6. As provided by the Workers Compensation Act, preliminary hearing findings are not final but subject to modification upon a full hearing on the claim.³

WHEREFORE, the Appeals Board reverses the preliminary hearing finding made in the June 14, 1999 Order that Ms. Pugh failed to prove timely written claim.

IT IS SO ORDERED.

Dated this ____ day of August 1999.

BOARD MEMBER

c: Patrick C. Smith, Pittsburg, KS
Stephen J. Jones, Wichita, KS
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director

³ K.S.A. 1999 Supp. 44-534a(a)(2).